

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
THE PROCTER & GAMBLE COMPANY,	:	
	:	08 Civ. 01532 (WHP)
Plaintiff,	:	
	:	
- against -	:	<u>Reply to Counterclaim</u>
	:	
PLAYTEX PRODUCTS, INC.,	:	
	:	
Defendant.	:	
_____	X	

Plaintiff and Counterclaim Defendant The Procter & Gamble Company ("P&G") by its attorneys Kramer Levin Naftalis & Frankel LLP, for its reply to the Counterclaim of defendant Playtex Products, Inc. ("Playtex"), responds as follows:

1. States that the allegations of paragraph 1 assert a legal conclusion as to which no response is required.

2. States that the allegations of paragraph 2 assert a legal conclusion as to which no response is required.

3. Admits, on information and belief, the allegations of paragraph 3.

4. Admits the allegations of paragraph 4.

5. Admits the allegations of paragraph 5.

6. Admits the allegations of paragraph 6.

7. Admits the allegations of paragraph 7.

8. Denies the allegations of paragraph 8, except admits that Playtex markets and sells a purportedly altered version of Gentle Glide tampons in interstate commerce and in this judicial district.

9. Admits the allegations of paragraph 9.

10. Denies the allegations of paragraph 10, except refers to the commercials for their true and accurate terms.

11. Admits the allegations of paragraph 11.

12. Denies the allegations of paragraph 12, except admits that P&G has not conducted an *in vivo* test using what Playtex contends is a new version of Playtex Gentle Glide, which Playtex has represented is not materially changed from the product used by P&G in its *in vivo* testing.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13.

14. Denies the allegations of paragraph 14.

15. Denies the allegations of paragraph 15.

First Affirmative Defense

16. The counterclaim fails to state a claim upon which relief may be granted.

Second Affirmative Defense

17. The counterclaim is barred in whole or in part by the doctrines of *res judicata* and/or collateral estoppel.

Third Affirmative Defense

18. The counterclaim is barred in whole or in part by the doctrines of equitable estoppel and/or judicial estoppel.

Fourth Affirmative Defense

19. The counterclaim is barred in whole or in part by the doctrines of waiver and/or laches.

Fifth Affirmative Defense

20. The counterclaim is barred on whole or in part by the doctrine of unclean hands.

Wherefore, plaintiff respectfully requests that the Court enter judgment:

- (i) dismissing the counterclaim;
- (ii) awarding the costs and expenses incurred in defending against the counterclaim, including attorneys' fees, and

(iii) awarding such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 25, 2008

Kramer Levin, Naftalis & Frankel LLP

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